



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,583	02/05/2004	Douglas A. Larson	501296.01 (30266/US)	6732

7590 09/26/2007

Kimton N. Eng, Esq.
DORSEY & WHITNEY LLP
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/26/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/773,583

Applicant(s)

LARSON ET AL.

Examiner

Craig E. Walter

Art Unit

2188

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 07 June 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

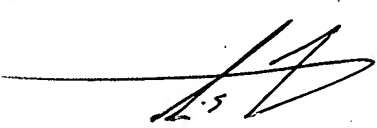
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


HYUNG SOUGH
SUPERVISORY PATENT EXAMINER

9/24/07


Craig E. Walter
Examiner Art Unit 2188

Continuation of 3. Examiner disagrees with Appellant's characterization of amendments filed after final under the heading "Status of Amendments" (page 6 of Brief filed 7 June 2007). More specifically, Appellant's amendment filed after the Office action made FINAL mailed on 12 February 2007 was NOT entered by Examiner as per the advisory action mailed 7 March 2007. This amendment included a modification to claim 40 (i.e. adding a semicolon to line 5 of the claim). Examiner maintains the status of amendments should read, "Appellants canceled claims 1-4, 11-15 and 21-25, and amended claims 32 and 40 in the amendment filed 12 February 2007. This amendment was denied entry by Examiner on 7 March 2007. Appellant further canceled claims 1-4, 11-15, 21-25 and 32-39, and amended claim 40 on 8 June 2007. Examiner entered this amendment on 14 August 2007." It is worthy to note that status indicator of claim 40 reads, "previously presented" in the amendment filed 8 June 2007, however it should read, "amended" as the change to the claim was not entered by Examiner on 12 February 2007.

Continuation of 10. Other (including any explanation in support of the above items): Appellant's "evidence" cited in section IX. "Evidence Appendix" is deemed improper, as the "evidence" provided solely consists of documentation, not evidence, presently of record (i.e. Examiner's Office action mailed 5 December 2006, Appellant's response dated 5 February 2007, Supplemental response dated 5 June 2007, and the original specification). 37 CFR § 41.37(c)(1)(ix) requires, "An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner... This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal." The cited documents are not evidence submitted under §§ 1.130, 1.131 or 1.132, nor are they "other evidence entered by the examiner and relied upon by appellant in the appeal". Further, these documents are not "evidence relied upon by the examiner as to ground of rejection to be reviewed on appeal", hence they fail to constitute "evidence" within the meaning of 41.37(c)(1)(ix). As such, Exhibits A-D (along with any reference to these exhibits) should be removed from the Appeal Brief.